



**Office of the Attorney General  
State of Texas**

June 29, 1992

**DAN MORALES**  
ATTORNEY GENERAL

Honorable Michael J. Guarino  
Criminal District Attorney  
Galveston County  
405 County Courthouse  
Galveston, Texas 77550

Letter Opinion No. 92-22

Re: Whether a commissioners court may  
refuse to fund positions in a tax assessor's  
office (RQ-312)

Dear Mr. Guarino:

This is in regard to your January 13, 1992, request for an attorney general opinion, our file number RQ-312. You ask whether the commissioners court may refuse to fund certain positions in the office of the county tax assessor-collector. You also ask whether, if the appraisal functions of the tax assessor's office are transferred by contract to an appraisal district, the tax assessor could be held "personally liable for the loss of public funds if the appraisal district is negligent or engages in misconduct." We decline to attempt to answer your questions in an attorney general opinion because they involve questions of fact.

As you indicate in your request, the office of county tax-assessor collector is a constitutionally established office. See Tex. Const. art. VIII, § 14. While the commissioners court has authority to determine the number of employee positions to be maintained in such office, see Local Gov't Code § 151.002, the commissioners court may not "attempt to abolish or restrict the office . . . by refusing to allow or by preventing the elected official from performing those duties required of him." *Vondy v. Commissioners Court of Uvalde County*, 714 S.W.2d 417, 422 (Tex. App.--San Antonio 1986, writ ref'd n.r.e.); see also *Commissioners Court of Harris County v. Fullerton*, 596 S.W.2d 572 (Tex. App--[1st Dist.] Houston 1980, writ ref'd n.r.e.) (commissioners court abused its discretion by refusing to fund certain items deemed necessary for county auditor's performance of his duties where funds were available therefor). On the other hand, courts have allowed that the commissioners court has

considerable discretion in its funding of such an office. See *Bomer v. Ector County Comm's Court*, 676 S.W.2d 662 (Tex. App.--El Paso 1984, writ ref'd n.r.e.)

You say that the motive of the commissioners court, in refusing to fund the positions in the tax assessor's office, is to persuade the tax assessor to contract with an appraisal district. See Tax Code § 6.24(b) (commissioners may, with the approval of the county tax assessor-collector, contract with an appraisal district "to perform duties relating to the assessment or collection of taxes for the county"). You conclude that the commissioners court in this instance would abuse its discretion by refusing to fund the positions in question.

We think resolution of your question as to the propriety of the commissioners court's refusal to fund certain positions in the tax assessor's office requires a full finding of facts: for example, as to how much the abolition of the positions would interfere with the tax assessor's performance of his duties, and as to the availability of funding for those positions. See *Vondy*, 714 S.W.2d 417. We are unable, in the opinion process, to make such findings of fact.

Similarly, we do not believe that we can resolve the other question you present -- whether, if the appraisal functions are contractually transferred with the tax assessor's approval to an appraisal district pursuant to section 6.24(b) of the Tax Code, the tax assessor-collector could be held "personally liable for the loss of public funds if the appraisal district is negligent or engages in misconduct." We are generally, because of their fact-bound nature, unable to respond to questions regarding the potential liability of public officials in attorney general opinions. See Attorney General Opinions JM-1276 at 8, JM-1224 at 15 (1990). Whether the tax-assessor ever could be held liable for actions of the appraisal district could depend on the factual circumstances of the particular events which give rise to potential liability and possibly on the terms of the contract as well.

Accordingly, we are closing our file on RQ-312. Please do not hesitate to contact us should you have any questions in this matter.

### SUMMARY

Determining whether the commissioners court would abuse its discretion by refusing to fund positions in the tax assessors office would involve questions of fact. Determining whether the tax assessor could be personally liable for acts of an appraisal

district which had contracted with the county to perform appraisal functions would also involve questions of fact that cannot be addressed in the opinion process.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, cursive script.

**William Walker**  
**Assistant Attorney General**  
**Opinion Committee**